

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

In the Matter of:

GREEN JOBWORKS, LLC/
ACECO, LLC

Employers,

and

Case No.: 05-RC-154596

CONSTRUCTION AND MASTER LABORERS
LOCAL 11, a/w LABORERS
INTERNATIONAL UNION OF NORTH AMERICA
(LIUNA)

Petitioner.

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**GREEN JOBWORKS' BRIEF ON REVIEW OF REGIONAL DIRECTOR'S
DECISION AND ORDER**

Green JobWorks, LLC (GJW) submits this brief on the Review requested by the Petitioner, Construction and Master Laborers Local 11 a/w Laborers International Union of North America (LIUNA or the Union). As set forth below and contrary to the Petitioner's assertions, the Regional Director's decision on the joint employer issue raised in the proceedings below should not be reversed because (1) the Regional Director's Decision is not contrary to the standards recently articulated by the Board in *Browning-Ferris Industries of California, Inc.*¹ for determining joint employer status, and (2) the Regional Director's finding that ACECO did not have sufficient control over terms and conditions of GJW's employees to warrant a finding of

¹ 362 NLRB No. 186 (2015) herein referred to as *BFI*. Although GJW believes the *BFI* case improperly expanded the reach of the joint employer status, for the purpose of this submission, GJW accepts the notion that the *BFI* decision reflects the position of the Board at the time of the Regional Director's decision under review here.

joint employer status is not clearly erroneous. Consequently, the Board should affirm the decision of the Regional Director.

In this case, the Union filed a Petition seeking to represent GJW's employees. The Union claimed that the GJW employees were jointly employed by both GJW and Aceco, LLC. The Region conducted two days of hearing where the parties provided testimony regarding the nature of the GJW and Aceco business relationship and the lack of control that Aceco exercised over the workers provided by GJW. Although the hearing ended before the Board's decision in *BFI*, the Region held its decision in abeyance until *BFI* was decided, and requested and received supplemental briefs on the joint employer status before making its decision.

Upon review of the record as a whole, the Regional Director correctly concluded that the Union failed to meet its burden to establish that Aceco was a joint employer of GJW's employees. In so doing, the Regional Director noted the stark contrasts between the facts in *BFI* and the matter at hand. Specifically, the Regional Director recognized that (1) unlike *BFI*, the Union failed to produce sufficient evidence to support its assertion that Aceco influences the decisions of GJW with regards to essential terms and conditions of employment of its employees, including recruitment, hiring, and the benefits received by GJW's employees, (2) unlike *BFI*, there was insufficient record evidence to establish that Aceco possessed and exercised any power to request the immediate dismissal of any employee of GJW, (3) unlike *BFI*, there was no evidence that ACECO had any influence on the wages that GJW compensated its employees other than an assumption that GJW likely would pay its employees less than the contractual amount it agreed for it to perform the work, (4) unlike *BFI*, the record did not establish that ACECO possessed or exercised authority to hold meetings with GJW employees or direct them to improve their performance, (5) unlike *BFI*, the evidence presented showed that at best, ACECO exercised minimal supervision over GJW employees and that the general contractor had more supervisory authority over GJW's

employees than Aceco, and (6) unlike *BFI* where supervisors assigned employees to specific tasks and counseled them about their job performance as needed, there was no indication in the record that ACECO even came close to exercising that level of oversight over GJW employees either directly or indirectly.

The Regional Director similarly found the evidence insufficient to support the Union's claim that ACECO was a necessary party to any collective-bargaining discussions regarding GJW employees. The Regional Director noted that the record evidence showed that the work schedule was set by the general contractor rather than Aceco, and the general contractor has ultimate control over the work sites. Regarding safety issues, Regional Director noted that another contractor, not Aceco, provides a hygienist to provide safety oversight over employees on the work site. He further noted that the agreement between GJW and Aceco specifically provided that the break times and productivity level for GJW employees was solely in the discretion of GJW. Based on those factors, the Regional Director correctly concluded that ACECO did not have sufficient control that is probative of an employment relationship such that it would warrant ACECO's involvement in collective-bargaining.²

As noted above, the Regional Director thoroughly examined the record in light of the Board's holding and properly concluded that there was insufficient record evidence to establish a

² The Regional Director took notice of the terms of GJW's agreement with Aceco which provided that GJW was solely responsible for the following: (a) Recruiting, hiring, assigning, orienting, reassigning, counseling, disciplining, and discharging the Leased Employees, (b) Making legally-required employment law disclosures (wage-hour posters, etc.) to them, (c) Establishing, calculating, and paying their wages and overtime, (d) Exercising human resources supervision of them, (e) Withholding, remitting, and reporting on their payroll taxes and charges for programs that GJW is legislatively required to provide (including workers' compensation), (f) Maintaining personnel and payroll records for them, (g) Obtaining and administering I-9 documentation of GJW employees' right to work in the United States, (h) Paying Leased Employees' wages and providing the benefits that GJW offers to them, (i) Paying or withholding all required payroll taxes, contributions, and insurance premiums for programs that GJW is legislatively mandated to provide to Leased Employees' as GJW's employees, (j) Providing workers' compensation benefits or coverage for Leased Employees' in amounts at least equal to what is required by law, (k) Fulfilling the employer's obligations for unemployment compensation, (l) Complying with employment laws, as they apply to GJW. Aceco Exhibit 2, p.5.

joint employer relationship. Consequently, the Board should uphold the Regional Director's decision on the joint employer issue raised in the proceedings below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of March, 2016, a true and correct copy of the foregoing brief was sent by email to:

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